

## AUTHORIZING THE SALE OF ISOLATED OR DISCONNECTED TRACTS OF LAND

JULY 26, 1965.—Ordered to be printed

Mr. SIMPSON, from the Committee on Interior and Insular Affairs,  
submitted the following

### R E P O R T

[To accompany S. 625]

The Committee on Interior and Insular Affairs, to whom was referred the bill (S. 625) to authorize the sale of isolated or disconnected tracts of lands, having considered the same, report favorably thereon with amendment(s) and recommend that the bill (as amended) do pass.

#### AMENDMENTS

On page 2, line 4, substitute the word "which" for the word "it".  
On page 2, substitute the following for section 2:

SEC. 2. If the person who has been using the isolated or disconnected tracts of land purchases said land under the provisions of section 2455 of the Revised Statutes, as amended (43 U.S.C. sec. 1171), the amount paid for the land will include the enhanced value brought to the land by the users or their predecessors and will be considered full payment for all trespass against the United States.

Amend the title so as to read:

To authorize the sale of certain public lands.

#### PURPOSE

The purpose of the bill is to afford relief to landowners who have fenced in, or utilized with their lands, adjacent tracts of land owned by the United States. It would permit preference sale under the 1958 public sale law of public domain in tracts of 760 acres or less which contain some land suitable for cultivation, but which cannot be classified for disposal under the desert land or homestead laws.

## BACKGROUND

In many areas of Wyoming, pioneer settlers had difficulty in laying out their homesteads and fencing irrigable land. Sometimes settlers would knowingly or unknowingly fence a unit of Government land which could be irrigated profitably. Now, after many years of this technical trespass, the Bureau of Land Management has been re-surveying the lands and ordering the ranchers to build their fences on the boundary lines and pay fines for back trespasses. For the most part, the lands are of little value to the U.S. Government, but their loss would be considerable to the individual ranches. The bill would permit preference sale to these adjacent owners at the improved value of the land.

## CONCLUSION

The committee unanimously recommends enactment of S. 625.

## DEPARTMENTAL REPORTS

The reports of the Department of the Interior and the Bureau of the Budget are set forth below:

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C., July 8, 1965.

Hon. HENRY M. JACKSON,  
*Chairman, Committee on Interior and Insular Affairs,*  
*U.S. Senate, Washington, D.C.*

DEAR SENATOR JACKSON: This responds to your request for our views on S. 625, a bill to authorize the sale of isolated or disconnected tracts of lands.

We recommend that the bill be enacted if amended as set forth below.

S. 625 amends the public sale law, rev. Stat. 2455, as amended, 43 U.S.C. 1171 (1958), to provide that legal subdivisions of the public land, not exceeding 760 acres, which contain some land which can be put to cultivation but is insufficient because of climatic, topographic, economic, soil or other factors to justify a classification as proper for disposal under the homestead or desert land laws, may be sold by the Secretary of the Interior upon the application of an adjoining landowner or a person who holds a valid entry of lands adjoining such tract. Section 2 of the bill provides that if the land which is sold under the public sale law has been utilized by the purchaser, his trespass against the United States will be forgiven and waived.

The public sale law now authorizes the Secretary to sell at public sale any isolated or disconnected tract of public land not exceeding 1,520 acres. It also authorizes the sale of legal subdivisions of the public land not exceeding 760 acres, the greater part of which is mountainous or too rough for cultivation, upon the application of an adjoining landowner or a person who holds a valid entry of land adjoining such tract. In both situations, the law provides that for a period of not less than 30 days after the highest bid has been received, any owner or owners of such contiguous land have a preference right to buy the offered land at the highest bid price, but in no case is the adjacent landowner required to pay more than three times the appraised price of the land.

Isolated or disconnected tracts encompass parcels of land which are either completely surrounded on all sides by lands in private ownership or lands in permanent withdrawals, or a combination of both. The limitation as to the character of nonisolated lands that may be disposed of under the statute, has been construed by the Department to require that each subdivision of such land must be mountainous or too rough for cultivation in order to be subject to sale under the law. Moreover, the fact that land may be unsuitable for cultivation by reason of its salinity, poor soil, lack of water, alkalinity, etc., does not afford a sufficient basis for disposing of the land under the law.

The Public Land Sale Act (78 Stat. 988 (1964), 43 U.S.C. 1421-1427 (supp. V, 1964)), in part authorizes the Secretary of the Interior to sell lands "that have been classified for disposal in accordance with a determination that \* \* \* (b) the lands are chiefly valuable for \* \* \* agricultural (exclusive of lands chiefly valuable for grazing and raising forage crops) \* \* \* development." The Public Land Sale Act provides for the disposal of such land at public auction but contains no preference right provision for adjoining landowners. The authority granted by S. 625 would overlap, to some degree, the Secretary's existing authority under the 1964 statute. However, many of the lands which could be sold under S. 625 could not be considered "chiefly valuable" for agricultural use or development within the ambit of the 1964 law.

We understand that the bill is designed to afford relief to landowners who have fenced in with their lands tracts of Government land. Some of these situations may have arisen because the landowners encountered difficulties in determining the boundary lines of their holdings. We believe that most of the tracts so fenced in with private holdings and utilized with the agricultural operations on the privately owned lands are not sufficient in and of themselves to justify classification for disposal either under the homestead or desert land laws because they would not afford alone a sufficiently viable economic unit. We therefore have no objection to that portion of the bill which would make such lands subject to disposal under Rev. Stat. 2455, as amended.

We strongly object to section 2 of the bill which would waive prior trespass on the land by the purchaser thereof. We are unaware of any sound justification for such action. Your committee has strongly opposed waiver of trespass charges. Senate Report 1223, 86th Congress, 2d session, concerning H.R. 3676, culminating in the act of April 22, 1960 (74 Stat. 80), stated that failure:

"\* \* \* to eliminate unauthorized uses or to transform them into an authorized status leads to the spread of unauthorized use, deprives the Treasury of current revenues, and breeds disrespect for the property rights of the Government. Each Government employee has a duty of reporting trespass of public land, and the officers to whom it is reported have a duty of diligent action until the case is finally terminated.

\* \* \* \* \*

"Anyone occupying and using without authority lands of the United States is liable in damages for the trespass use made of the land (*Utah Power & Light Company v. United States* (243 U.S. 389)). The measure of damages to the United States in cases of trespass on public lands is the measure generally applicable under the laws

of the State in which the trespass is committed (*Mason et al. v. United States* (260 U.S. 545)).

*"The committee expects that prompt action will be taken by the Department of the Interior and by the Department of Justice, if requested, to obtain the payment of amounts owed to the United States for past use."* [Emphasis supplies.]

We also believe that the title of the bill should be changed. The bill does not authorize the sale of isolated or disconnected tracts of land—existing law already does so in 43 U.S.C. 1171. We are suggesting an appropriate title below.

To effectuate our recommendations, the following amendments are suggested:

1. Change the title to read "To authorize the sale of certain public lands."

2. Delete on page 2 of the bill lines 13 to 15 inclusive.

We also suggest that on page 2, line 4 of the bill the word "which" should be substituted for the word "it".

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

D. OTIS BEASLEY,  
*Assistant Secretary of the Interior;*

EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
Washington, D.C., July 9, 1965.

HON. HENRY M. JACKSON,  
*Chairman, Committee on Interior and Insular Affairs,  
U.S. Senate, New Senate Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Bureau of the Budget on S. 625, a bill to authorize the sale of isolated or disconnected tracts of lands.

The purpose of the bill is to permit preference sale to adjacent owners or entrymen, under the 1958 public sale law (Rev. Stat. 2455, as amended, 43 U.S.C. 1171) of public domain in tracts of 760 acres or less which contain some land suitable for cultivation, but which for various reasons cannot be classified for disposal under the desert land or homestead laws. The bill would also waive prior trespass on lands purchased by such parties.

The report which the Secretary of the Interior is submitting on S. 625 recommends that the bill be enacted if the waiver of trespass provision is omitted.

We concur in this recommendation. If so amended, the Bureau of the Budget would have no objection to enactment of the bill.

Sincerely yours,

PHILLIP S. HUGHES,  
*Assistant Director for Legislative Reference.*